

REMARKS

The Office Action dated March 22, 2005 has been carefully reviewed and the foregoing amendments have been made as a consequence thereof.

The Office Action suggests at page 2 that the title of the invention is not descriptive.

Applicants respectfully traverse the objection to the specification. Specifically, Applicants have amended the title of the invention to recite "METHODS AND SYSTEMS FOR GENERATING AND DISPLAYING THE CAPACITY OF A DELIVERY MANAGEMENT SYSTEM". Applicants submit that the new title is considered to be clearly indicative of the invention to which the claims are directed. Accordingly, Applicants respectfully request that the objection to the specification be withdrawn.

Claims 5 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite and failing to point out and distinctly claim the subject matter which the Applicants regard as the invention. Applicants have amended Claims 5 and 14 to overcome the rejection. Accordingly, Applicants respectfully request that the 35 U.S.C. §112, second paragraph, rejection of Claims 5 and 14 be withdrawn.

The rejection of Claims 1-18 under 35 U.S.C. § 101 as being directed to non-statutory subject matter is respectfully traversed.

The Office Action suggests at pages 3 and 4 that Claims 1-9 do not "apply, involve, or use the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper". Accordingly, the Office Action rejects Claims 1-9 as being directed to non-statutory subject matter. Applicants respectfully traverse these suggestions and this rejection.

More specifically, Applicants submit that Claims 1-9 are directed to statutory subject matter. 35 U.S.C. § 101 states, "Whoever invents or discovers any new and useful process...may obtain a patent thereof, subject to the conditions and requirements of this title." Moreover, "[t]he plain and unambiguous meaning of section 101 is that any new and useful process...may be patented if it meets the requirements for patentability set forth in Title 35, such as those found in sections 102, 103, and 112...Congress intended § 101 to extend to anything under the sun that is made by man ". *In re Alappat*, 33 F.3d 1542 (Fed.

Cir. 1994). “When the term process is used to represent the means or method of producing a result...it is patentable” *Corning v. Burden*, 56 U.S. 268 (1853). “That a process may be patentable, irrespective of the particular form of the instrumentalities used, cannot be disputed. If one of the steps of a process be that a certain substance is to be reduced to a powder, it may not be at all material what instrument or machinery is used to effect that object, whether a hammer, a pestle and mortar, or a mill. Either may be pointed out; but if the patent is not confined to that particular tool or machine, the use of the others would be an infringement, the general process being the same. A process is a mode of treatment of certain materials to produce a given result. It is an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing.” *Cochrane v. Deener*, 94 U.S. 787, 788 (1876). The word “process” means “method” *In re Hiroyuki Iwahashi*, 888 F.2d 1374 (Fed. Cir. 1989). Applicants respectfully submit that independent Claim 1 recites a method of displaying the capacity utilization of a goods delivery system. The method recited in Claim 1 means process and the recitations in Claim 1 are performed to display the capacity utilization of a goods delivery system, which is a result and has a different state than displaying other data from the goods delivery system or other systems. Regardless of instrument or machinery that may be used to implement the methods recited in Claim 1 the methods are processes, which are statutory subject matter.

The Office Action states on page 3 that the claimed invention does not produce a concrete result and is found to be directed to non-statutory subject matter. Applicants respectfully traverse the statement.

Applicants respectfully submit that Claim 1 is limited to a practical application in the technological arts and is not directed to an abstract idea. Claim 1 includes recitations that produce useful, tangible, and concrete results. “A process...employing...abstract idea is patentable subject matter even though ...abstract idea would not, by itself, be entitled to such protection.” *State Street Bank & Trust Co. v. Signature Financial*, 149 F.3d 1374 (Fed. Cir. 1998). A transformation “constituted a practical application of an abstract idea because it corresponded to a useful, concrete or tangible result.” *State Street Bank & Trust Co. v. Signature Financial*, 149 F.3d 1373 (Fed. Cir. 1998). Claim 1 is not directed to an abstract ideas because the claim includes recitations that produce useful, tangible, and concrete results. As an example, Claim 1 recites a “method of displaying the capacity utilization of a

goods delivery system...said method of displaying the capacity utilization comprising the steps of...displaying a periodic calendar format illustrating said delivery agent information and delivery agent statistics for a respective zone for each day in the respective period”, which are performed to generate a useful, tangible, and concrete result. An example of the useful, tangible, and concrete result is displaying a periodic calendar.

Furthermore, “all that is necessary, in our view, to make a sequence of operational steps a statutory “process” within 35 U.S.C. §101 is that it be in the technological arts so as to be in consonance with the Constitutional purpose to promote the progress of “useful arts””. *In re Musgrave*, 431 F.2d 882, 893 (Fed. Cir. 1970). The term “process” means “process, art, or method” (35 U.S.C. §100(b)). Applicants respectfully submit that Claim 1 includes recitations which are within the technological arts of displaying data relating to a goods delivery system so as to be in consonance with the Constitutional purpose to promote the progress of useful arts. An example of usefulness of displaying such data is described at paragraph 0036 of the specification. Particularly, the data “gives the user the ability to act on the detailed delivery agent information to make the goods delivery system more efficient”.

Claims 2-9 depend from independent Claim 1.

The Office Action suggests at page 4 that Claims 10-18 do not “utilize the proper computer program product format and effectively recite descriptive material”. Accordingly, the Office Action rejects Claims 10-18 as being directed to non-statutory subject matter. Applicants respectfully traverse these suggestions and this rejection.

Claim 10 has been amended as suggested by the examiner to recite “a computer program embodied on a computer readable medium for executing a computer process for displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, said computer program comprising at least one code segment for employing a method of displaying the capacity utilization...” Applicants submit that Claims 10-18 are directed to statutory subject matter. Accordingly, Applicants respectfully request that the objection to Claims 10-18 be withdrawn.

For at least the reasons set forth above, Applicants respectfully request that the Section 101 rejection of Claims 1-18 be withdrawn.

The rejection of Claims 1-20 under 35 U.S.C. § 103 (a) as being unpatentable over Webvan (1999), aspects of which are discussed in the following references: Borders et al. (US Patent Publication 2001/0047285) (“Borders”); Murphy, Jean, Webvan: Rewriting The Rules On ‘Last Mile’ Delivery (2000) (“Murphy”); O’Briant, Erin, Webvan Revs Up (2000) (“O’Briant”), is respectfully traversed.

Borders describes a computer system (100) for scheduling delivery of an order via a wide area network. The computer system associates a customer point value with each customer according to a customer point system (602). The customer point value is determined based on order history, such as the average shipment size and the shipment frequency. The computer system then divides the customers into customer groups according to the customer point values. The system determines an actual capacity allocation distribution among the customer groups based on the total number of the customers and the total number of orders. *See Paragraphs 0094, 0096, 0113.* The system also determines which delivery window associated with a specific time of a day is available for a specific customer group, and displays a delivery window grid showing the available delivery windows. *See Figures 13 and 14, and Paragraphs 0125 and 0129.* Notably, Borders fails to disclose a system calculating the usage of the delivery based on a single day and a delivery zone. Borders also fails to disclose a system displaying a periodic calendar format illustrating the delivery agent statistics for a respective zone for each day in the respective period.

Murphy and O’Briant respectively disclose a computer system for scheduling delivery of an order. The system calculates when the trucks are supposed to be loaded, when the trucks are supposed to depart from the facility, and when the trucks are supposed to arrive at the stations. Notably, both Murphy and O’Briant fail to disclose a system calculating the usage of the delivery based on a single day and a delivery zone.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. None of Borders, Murphy,

and O'Briant, considered alone or in combination, describe or suggest the claimed combination. Additionally, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicant's own teaching. Rather, only the conclusory statement that "it would have been obvious to one skilled in the art at the time of the invention that the goods delivery system as taught by Webvan...would have benefited from displaying a plurality of statistics (metrics) regarding the goods delivery system...would have benefited from enabling users to view (display) the available delivery times (capacity of the system) in a plurality of periodic calendar formats..." suggests combining the disclosures.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levensgood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicant's disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Furthermore, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected from multiple references in an attempt to arrive at the claimed invention. Since there is no teaching or suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants request that the Section 103 rejection be withdrawn.

Further, and to the extent understood, none of Borders, Murphy, and O'Briant, considered alone or in combination, describe or suggest the claimed combination, and as such, the presently pending claims are patentably distinguishable from the cited combination. Specifically, Claim 1 recites a method of displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, the method of displaying the capacity utilization including the steps of "getting delivery agent information...calculating the delivery capacity for said delivery agent information...calculating delivery capacity used for said delivery agent information...calculating usage information for said delivery agent information based on a single day and a delivery zone...displaying a periodic calendar format illustrating said delivery agent information and delivery agent statistics for a respective zone for each day in the respective period...said periodic calendar further adapted to have drill down capability to display additional daily details."

None of Borders, Murphy, and O'Briant, considered alone or in combination, describe nor suggest a method of displaying the capacity utilization of a goods delivery system as recited in Claim 1. More specifically, none of Borders, Murphy, and O'Briant, considered alone or in combination, describe nor suggest calculating usage information for the delivery agent information based on a single day and a delivery zone. Rather, in contrast to the present invention, Borders describes calculating an actual customer capacity which equals the total number of orders versus the total number of the customers, wherein the actual customer capacity is calculated based on a customer group divided according to the customer order history, such as the average shipment size and the shipmen frequency, and both Murphy and O'Briant are silent on calculating usage information for the delivery agent information based on a single day and a delivery zone.

Also, none of Borders, Murphy, and O'Briant, considered alone or in combination, describe nor suggest a method of displaying a periodic calendar format illustrating the delivery agent statistics for a respective zone for each day in the respective period. Rather, in contrast to the present invention, Borders describes displaying a delivery window grid showing available delivery windows, wherein the delivery window is associated with a specific time of a day and is available for a specific customer group, and both Murphy and

O'Briant are also silent on displaying a periodic calendar format illustrating the delivery agent statistics.

Moreover, Applicants respectfully traverse the assertion at page 13 of the Office Action that “per applicants own admission the determination (calculation, utilization, etc.) of statistics in a goods delivery system is conventional and well established in the art.” Applicants respectfully disagree with this suggestion because there is no documentary evidence cited in the Office Action to support such assertion.

Further, Applicants respectfully traverse the Official notice taken on the ability to “drill-down”. Specifically, the Office Action suggests at page 14 that “the ability to ‘drill down’ in calendaring or other systems is conventional and well established as a means for enabling user to efficiently view (navigate) their schedule or other information in a plurality of formats or level”. Applicants respectfully disagree with this suggestion because there is no documentary evidence cited in the Office Action to support such assertion. “[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.” Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697. Additionally, Applicants respectfully submit that none of Borders, Murphy, and O'Briant, considered alone or in combination, describe nor suggest a periodic calendar adapted to have drill down capability to display additional daily details.

Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Webvan.

Claims 2-9 depend from the independent Claim 1. When the recitations of Claims 2-9 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 2-9 likewise are patentable over Webvan.

Claim 10 recites a computer program embodied on a computer readable medium for executing a computer process for displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, said computer program comprising at least one code segment for employing a method of displaying the capacity utilization comprising the steps of “getting delivery agent

information...calculating the delivery capacity for said delivery agent information...calculating delivery capacity used for said delivery agent information...calculating usage information for said delivery agent information based on a single day and a delivery zone...displaying a periodic calendar format illustrating said delivery agent information and delivery agent statistics for a respective zone for each day in the respective period...said periodic calendar further adapted to have drill down capability to display additional daily details.”

None of Borders, Murphy, and O’Briant, considered alone or in combination, describe nor suggest a computer process for displaying the capacity utilization of a goods delivery system as recited in Claim 10. Particularly, and for the reasons explained above, none of Borders, Murphy, and O’Briant, considered alone or in combination, describe nor suggest calculating usage information for the delivery agent information based on a single day and a delivery zone, and displaying a periodic calendar format illustrating the delivery agent statistics for a respective zone for each day in the respective period, wherein the periodic calendar is adapted to have drill down capability to display additional daily details. Accordingly, for at least the reasons set forth above, Claim 10 is submitted to be patentable over Webvan.

Claims 11-18 depend from the independent Claim 10. When the recitations of Claims 11-18 are considered in combination with the recitations of Claim 10, Applicants submit that dependent Claims 11-18 likewise are patentable over Webvan.

Claim 19 recites an apparatus for displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, the apparatus for displaying the capacity utilization including “means for getting delivery agent information...means for calculating the delivery capacity for said delivery agent information...means for calculating delivery capacity used for said delivery agent information...means for calculating usage information for said delivery agent information based on a single day and a delivery zone...means for displaying a periodic calendar format illustrating said delivery agent information and delivery agent statistics for a respective zone for each day in the respective period...said periodic calendar further adapted to having means for utilizing drill down capability to display additional daily details.”

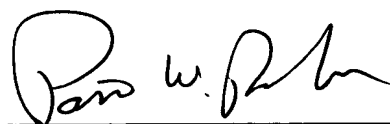
None of Borders, Murphy, and O'Briant, considered alone or in combination, describe nor suggest an apparatus for displaying the capacity utilization as recited in Claim 19. Particularly, and for the reasons explained above, none of Borders, Murphy, and O'Briant, considered alone or in combination, describe nor suggest means for calculating usage information for the delivery agent information based on a single day and a delivery zone, and means for displaying a periodic calendar format illustrating the delivery agent information and delivery agent statistics for a respective zone for each day in the respective period, wherein the periodic calendar is adapted to having means for utilizing drill down capability to display additional daily details. Accordingly, for at least the reasons set forth above, Claim 19 is submitted to be patentable over Webvan.

Claim 20 depends from the independent Claim 19. When the recitations of Claim 19 are considered in combination with the recitations of Claim 19, Applicants submit that dependent Claim 20 likewise is patentable over Webvan.

For at least the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 1-20 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



Patrick W. Rasche
Registration No. 37,916
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070